

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 EA-09 IO-13 ISO-00 TRSY-06 L-03
SSO-00 COME-00 IGA-02 ITC-01 SIG-02 JUSE-00 H-02
OMB-01 SS-15 NSC-05 NSCE-00 CIAE-00 INR-07
NSAE-00 INRE-00 /087 R

DRAFTED BY EB/OT/STA - MC JONES
APPROVED BY EB/OT/STA: JS SPIRO
TREASURY - T HUME (SUBS)
EA/J - E FEATHERSTONE
L/EB - C ROH (INFO)
EUR/RPE - R BRESLER (INFO)
-----130017Z 045222 /75-61

O 122338Z APR 77
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE
INFO USMISSION GENEVA IMMEDIATE
USDEL MTN GENEVA IMMEDIATE
USMISSION OECD PARIS IMMEDIATE
USMISSION EC BRUSSELS IMMEDIATE
AMEMBASSY OTTAWA PRIORITY
AMEMBASSY BONN
AMEMBASSY COPENHAGEN
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY LUXEMBOURG
AMEMBASSY BRUSSELS
AMEMBASSY DUBLIN
AMEMBASSY THE HAGUE
AMEMBASSY MADRID

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E.O. 11652: N/A

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TAGS: ETRD, JA

SUBJECT: COUNTERVAILING DUTY LITIGATION -- ZENITH CASE
ON REBATE OF JAPANESE COMMODITY TAX

REF: A) STATE 20455 (NOTAL) B) STATE 20440
C) STATE 2473

1. WE WERE INFORMED AFTERNOON OF APRIL 12 THAT THE US CUSTOMS COURT HAS GRANTED ZENITH'S MOTION FOR SUMMARY JUDGMENT, I.E. FOUND THAT TREASURY SHOULD HAVE CONSIDERED REBATE OF THE JAPANESE COMMODITY TAX TO BE A BOUNTY OR GRANT. THE DECISION WAS UNANIMOUS BUT NO FURTHER DETAILS ARE KNOWN AT THIS TIME. WE WILL SEND ADDITIONAL INFORMATION AS SOON AS AVAILABLE. STEPS ARE BEING TAKEN TO APPEAL THE DECISION TO THE COURT OF CUSTOMS AND PATENT APPEALS.

2. IN THE INTERIM, EMBASSY MAY DRAW ON REFS B AND C IN RESPONDING TO INQUIRIES. THE FOLLOWING Q AND A MAY ALSO BE OF ASSISTANCE.

BEGIN TEXT.

QUESTION: WHAT IS THE EFFECT OF THE CUSTOMS COURT DECISION

AGAINST THE UNITED STATES GOVERNMENT IN THE ZENITH CASE?

ANSWER: THE CUSTOMS COURT DECIDED THAT THE REBATE OF THE JAPANESE COMMODITY TAX (A MANUFACTURER'S EXCISE TAX) ON THE EXPORTATION OF VARIOUS CONSUMER ELECTRONIC PRODUCTS FROM JAPAN IS A BOUNTY OR GRANT (SUBSIDY) UNDER US COUNTERVAILING DUTY LAW AND REQUIRES IMPOSITION OF OFFSETTING DUTIES. THE LAW REQUIRES THAT WE SUSPEND LIQUIDATION ON ALL ENTRIES OF CONSUMER ELECTRONIC PRODUCTS (TVS, RADIOS, STEREOS, TAPE
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RECORDERS) FROM JAPAN WHEN THE DECISION IS PUBLISHED IN THE CUSTOMS BULLETIN IN ABOUT TWO WEEKS. THERE WILL BE NO RPT NO FINAL DETERMINATION OF DUTIES PAYABLE UNTIL THERE IS A FINAL COURT DECISION ON APPEAL. IMPORTERS WILL BE REQUIRED TO POST A SPECIAL BOND TO COVER THIS POTENTIAL LIABILITY WHICH AVERAGES ABOUT FIFTEEN PERCENT OF THE VALUE OF THE MERCHANDISE. ROUGHLY 1.5 BILLION DOLLARS IN ANNUAL IMPORTS ARE AFFECTED BY THIS DECISION. THE JUSTICE DEPARTMENT WILL APPEAL THE DECISION TO THE COURT OF CUSTOMS AND PATENT APPEALS AS RAPIDLY AS POSSIBLE. END TEXT. IN DISCUSSING THE BONDING PROCEDURE IT SHOULD BE MADE CLEAR THAT THE IMPORTERS WILL NOT BE POSTING AMOUNTS EQUAL TO FIFTEEN PERCENT OF THE VALUE OF THE IMPORTS BUT RATHER BONDS TO COVER THAT AMOUNT. THE RATES CHARGED FOR BONDS VARY BETWEEN ONE AND TEN DOLLARS PER THOUSAND IN BOND, BASED ON THE FINANCIAL POSITION OF THE IMPORTERS. THUS THE ACTUAL COSTS ARE MINIMAL. THE PROBLEM STEMS FROM THE

UNCERTAINTY THATSUSPENSION OF LIQUIDATION CREATES
ON THE ULTIMATE LIABILITY OFIMPORTERS.

3. THE JAPANESE EMBASSY HAS BEEN INFORMED OF
THE DECISION.
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition Event:
Disposition History: n/a
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Disposition Remarks:
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Drafter: MC JONES
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